

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: <u>11/30/09</u>

MICHAEL A. CARDODOZ  
*Corporation Counsel*

**THE CITY OF NEW YORK  
LAW DEPARTMENT**

100 CHURCH STREET  
NEW YORK, NY 10007

CHRISTOPHER A. SEACORD  
Labor and Employment Law Division  
Phone: (212) 788-0866  
Fax: (212) 341-3934  
Email: cseacord@law.nyc.gov

November 25, 2009

**BY HAND DELIVERY**

Honorable Denise L. Cote  
United States District Judge  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, NY 10007

**MEMO ENDORSED**

Re Smith v. New York City Dep't of Educ., et al.  
09 Civ. 9256 (DLC)

Dear Judge Cote:

I am an Assistant Corporation Counsel in the office of Michael A. Cardozo, Corporation Counsel of the City of New York, attorney for defendant Board of Education of the City School District of the City of New York ("BOE") (sued herein and also known as the "New York City Department of Education") in the above-referenced action. I write to respectfully request an extension of defendant BOE's time to respond to the complaint in this matter, from December 3, 2009, until December 30, 2009.

Plaintiff, a tenured physical education teacher and softball coach employed by defendant BOE, brings this action pursuant to, *inter alia*, Title IX of the Educational Amendments of 1972, 20 U.S.C. §§ 1681, et seq., and 42 U.S.C. § 1983, alleging that defendants retaliated against him for opposing a practice made unlawful under Title IX and for exercising his rights under the First Amendment to the United States Constitution. In particular, plaintiff alleges, among other things, that he was subjected to false charges, removed from his teaching and coaching positions, and placed in the reassignment room, all in retaliation for complaining about the disparity in funding between men's and women's sports programs.

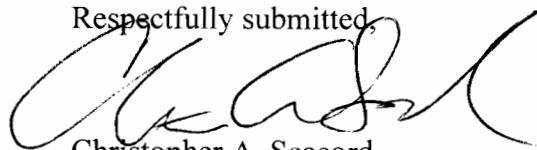
The requested extension is necessary in order to allow the undersigned to investigate plaintiff's allegations and to formulate an appropriate response to the complaint. In addition, the complaint names several individual defendants who are being sued in both their

*Granted  
Denise Cote  
11/30/09*

individual and official capacities, all of whom have yet to be served in this action. Thus, the additional time also is needed so that service may be effected on the remaining defendants and so that this office will have the opportunity, pursuant to Section 50-k of the New York General Municipal Law and based upon a review of the facts of the case, to make a determination as to whether it will represent the individually-named defendants. See Mercurio v. City of New York, 758 F.2d 862, 864-65 (2d Cir. 1985) (quoting Williams v. City of New York, 64 N.Y.2d 800, 486 N.Y.S.2d 918 (1985)) (stating that the decision as to whether to represent individual defendants is made by the Corporation Counsel as set forth in state law).

Defendant BOE was served with a copy of the complaint in this matter on November 13, 2009. Thus, defendant BOE's time to respond to the complaint currently expires on December 3, 2009. Should the Court grant the instant request, defendant BOE's time to respond to the complaint would be extended until December 30, 2009. Moreover, while a representation decision has not yet been made with regard to defendants Gardella, Shapiro, Ambrosio, and Squire, this office respectfully requests that the time for those defendants to respond to the complaint be extended *sua sponte* by this Court until December 30, 2009. I have spoken with plaintiff's counsel and he has consented to the requested extension. This is defendant BOE's first request for an extension of time to respond to the complaint in this matter.

Respectfully submitted,



Christopher A. Seacord  
Assistant Corporation Counsel

cc: Thomas Ricotta, Esq. (By First-Class Mail)  
Leeds Morelli & Brown, PC  
Attorneys for Plaintiff  
One Old Country Road, Suite 347  
Carle Place, New York 11514  
Phone: (516) 873-9550